



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

April 28, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-03646

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 222798.

The City of Houston (the "city") received a request for "any Fire or EMS records maintained by [the city] regarding the fire event at [a specified location]" during a specified time, and "any logs maintained reflecting the identity of the any callers, the times of any calls, and the substance of any calls relating to the referenced fire event." You state that city will release some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. As you acknowledge, you did not submit to this office a copy of the specific information requested within fifteen business days of receiving the instant request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.101 of the Government Code can constitute a compelling reason to withhold information made public by a failure to comply with the requirements of section 552.301. Thus, we will address your arguments under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the submitted information is excepted under section 552.101 in conjunction with section 773.091 of the Health and Safety Code. Section 773.091 provides in part:

- (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.
- ...
- (g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(c), (g). Except for the information specified in section 773.091(g), EMS records may only be released as provided under chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094.

In this case, you indicate that the submitted information relates to the provision of emergency medical services. We agree that some of the submitted records consist of records of the identity, evaluation or treatment of patients by EMS personnel. Therefore, we find that section 773.091 is applicable to the information we have marked. In addition, some of the information on the submitted audio recording consists of records of the identity, evaluation, or treatment of patients by EMS personnel. As such, section 773.091 is applicable to this specific information as well. Therefore, we conclude that, with the exception of information described in section 773.091(g), the city must withhold the submitted EMS records that we have marked and the portions of the audio recording that consist of records of the identity, evaluation, or treatment of patients by EMS personnel pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

However, we find that most of the information on the audio recording does not consist of a communication between certified emergency medical services personnel providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient. *See* Health & Safety § 773.091(a). Furthermore, most of the recordings do not consist of a record of the identity, evaluation, or treatment of a patient by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See* Health & Safety § 773.091(b). The submitted recordings instead consist of records of the city's coordination of its response to the fire event, description of the fire event, and location of the fire event. Accordingly, section 773.091 does not apply to the those portions of the recordings that do not specifically consist of records of the identity, evaluation, or treatment of a patient by EMS personnel, and the city may not withhold those portions of the recording.

In summary, the city must withhold the submitted EMS records that we have marked and the portions of the audio recording that consist of records of the identity, evaluation, or treatment of patients by EMS personnel pursuant to section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

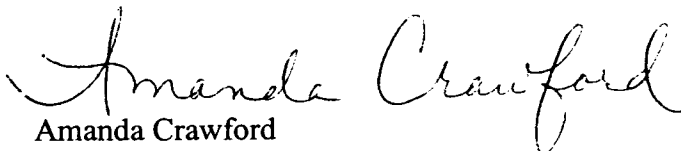
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in dark ink and is positioned above the printed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 222798

Enc. Submitted documents

c: Mr. Jason A. Starks
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(w/o enclosures)